

Regular Session, 2011

HOUSE CONCURRENT RESOLUTION NO. 162

BY REPRESENTATIVE ARNOLD

TAX/INCOME TAX: Urges and requests the Arkansas Dept. of Finance and Administration to revise its current criteria for determining the existence of a nexus requiring out-of-state businesses to pay Arkansas income tax

1 A CONCURRENT RESOLUTION

2 To urge and request the Arkansas Department of Finance and Administration to revise its
3 current criteria for determining that a tax "nexus" exists between the state of
4 Arkansas and businesses in other states by adopting a policy that the holder of a
5 mortgage or security interest by an out-of-state business on property located in
6 Arkansas does not create a "nexus" with Arkansas thereby subjecting such businesses
7 to payment of income tax in Arkansas.

8 WHEREAS, a state's ability to impose taxes on a multi-state business is limited by
9 "nexus" standards rooted in the due process and commerce clauses of the United States
10 Constitution; and

11 WHEREAS, the United States Supreme Court has reaffirmed that "nexus" requires
12 some form of physical presence in the taxing state, and that the tax imposed must be fairly
13 apportioned and related to services provided by the state; and

14 WHEREAS, in recent years a number of Louisiana financial institutions doing
15 business close to the Arkansas border have received a survey from the Arkansas Department
16 of Finance and Administration (ADFA) inquiring about their business operations or activity
17 in the state of Arkansas; and

18 WHEREAS, upon receiving completed surveys from Louisiana financial institutions,
19 the ADFA determined that certain Louisiana financial institutions have a sufficient "nexus"

1 with the state of Arkansas and that such Louisiana businesses owe income tax to the state
2 of Arkansas; and

3 WHEREAS, in these cases where ADFA determined a "nexus" existed with
4 Louisiana financial institutions, such institutions did not have a physical business presence
5 in the state of Arkansas; did not close any loans in the state of Arkansas; did not actively
6 solicit business from Arkansas residents; and did not own any property in the state of
7 Arkansas; and

8 WHEREAS, it appears in these cases that ADFA determined a "nexus" existed
9 simply because certain Louisiana financial institutions had obtained a mortgage on property
10 located in the state of Arkansas, even though the mortgage interest was created in Louisiana
11 and the loan was closed in Louisiana; and

12 WHEREAS, in these cases, Louisiana financial institutions are being taxed in both
13 Arkansas and Louisiana for the same business activity; and

14 WHEREAS, the Louisiana Bankers Association has heard of similar situations where
15 ADFA has determined "nexus" exists with businesses in other states surrounding Arkansas
16 where the only apparent connection with the state of Arkansas was that the out-of-state
17 business held a mortgage or security interest on property located in Arkansas; and

18 WHEREAS, the Legislature of Louisiana believes that simply holding a mortgage
19 or security interest on property located in Arkansas is not sufficient for ADFA to determine
20 that a "nexus" for tax purposes exists between the state of Arkansas and Louisiana
21 businesses.

22 THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby
23 urge and request the Arkansas Department of Finance and Administration to revise its
24 current criteria for determining that a tax "nexus" exists between the state of Arkansas and
25 businesses in other states by adopting a policy that the holder of a mortgage or security
26 interest by an out-of-state business on property located in Arkansas does not create a "nexus"
27 with Arkansas thereby subjecting such businesses to payment of income tax in Arkansas.

28 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the
29 Arkansas Department of Finance and Administration, the governor of the state of Arkansas,
30 and the Arkansas Legislature.

1 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the
2 governor of the state of Louisiana, the secretary of the Louisiana Department of Economic
3 Development, and the secretary of the Louisiana Department of Revenue and Taxation, so
4 that they may be made aware of the adverse economic conditions facing Louisiana
5 businesses.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Arnold

HCR No. 162

Urges and requests the Arkansas Dept. of Finance and Administration to revise its current criteria for determining the existence of a "nexus" requiring out-of-state businesses to pay income tax in Arkansas.